

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**DANIEL O'CONNELL, as Administrator of the  
Estate of PATRICK O'CONNELL, Deceased,  
and YORK INSURANCE COMPANY OF  
MAINE, individually and as subrogors of  
MICUCCI WHOLESALE GROCERS, and  
MICUCCI WHOLESALE GROCERS,  
Individually,**

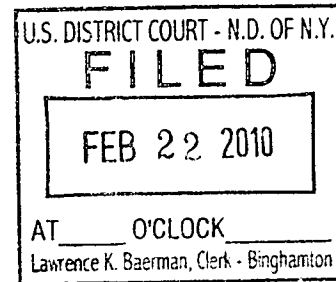
*Plaintiffs,*

*-against-*

**THE ARBORIO ROAD CONSTRUCTION  
COMPANY, INCORPORATED, JOHN  
ARBORIO, INC., and CLOUGH HARBOUR &  
ASSOCIATES, LLP,**

*Defendants*

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**[REDACTED] ORDER**  
Civil Action No.  
08-CV-00569 (TJM/DEP)

**WHEREAS,** the above-captioned action was commenced by the filing of a Complaint in this Court on May 29, 2008 [D.E. 1]; and,

**WHEREAS,** this Court has subject-matter jurisdiction over the Complaint pursuant to 28 U.S.C. 1332(a); and,

**WHEREAS,** defendant Clough Harbour & Associates, LLP ("CHA") filed and served its Answer to the Complaint with affirmative defenses on May 21, 2008 [D.E. 5]; and,

**WHEREAS,** in accordance with the scheduling deadlines established in this Court's Uniform Pretrial Scheduling Order entered in this case [D.E. 11], as amended, CHA served and filed its first motion for summary judgment pursuant to Rule 56 of the *Federal Rules of Civil Procedure* on November 13, 2009 seeking dismissal of the Complaint as a matter of law [D.E. 23]; and,

**WHEREAS**, plaintiffs filed and served their response and opposition to CHA's motion for summary judgment on December 4, 2009 [D.E. 27-29]; and,

**WHEREAS**, CHA filed and served its reply to plaintiffs' response and opposition to CHA's motion for summary judgment on December 14, 2009 [D.E. 30]; and,

**WHEREAS**, the Court having heard oral argument from the parties at a Special Term held on January 15, 2010; and,

**WHEREAS**, the Court having considered the parties' remaining contentions and found them to be without merit; and,

**WHEREAS**, the Court having issued its decision from the Bench on January 15, 2010, which granted CHA's motion for summary judgment in all respects;

**NOW**, upon due consideration of the papers filed in support and in opposition to CHA's motion for summary judgment, and upon the arguments of counsel made at the hearing held on January 15, 2010, and upon all prior proceedings held herein, it is hereby:

**ORDERED, ADJUGED AND DECREED**, that for the reasons stated by the Court on the record at the conclusion of the January 15, 2010, hearing in the above-captioned matter, defendant CHA's motion for summary judgment pursuant to Rule 56 of the *Federal Rules of Civil Procedure* [D.E. 23] is in all respects GRANTED; and it is further,

**ORDERED, ADJUDGED AND DECREED**, that the Complaint in the above-captioned action [D.E. 1] is hereby and in all respects DISMISSED, as to CHA; and it is further,

**ORDERED, ADJUDGED AND DECREED**, that the above-captioned case be CLOSED as to defendant CHA.

IT IS SO ORDERED.

SIGNED this 22<sup>nd</sup> day of Feb., 2010.  
Binghamton, New York

  
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HON. THOMAS J. MCAVOY  
SENIOR UNITED STATES DISTRICT JUDGE